

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**MONSANTO COMPANY**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 3:00CV161-P-D**

**MITCHELL SCRUGGS, et al**

**DEFENDANTS**

**ORDER**

This cause is before the Court on the plaintiff's Motion in Limine No. 14 [729]. The Court, having reviewed the motion, the response, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

Monsanto seeks entry of an order prohibiting defendants, their witnesses, experts and attorneys from offering any remarks, testimony or other evidence relating to defendants' counterclaims and/or defenses of antitrust, patent misuse and/or allegations of restraint of trade on grounds that such evidence lacks relevance and is, hence, inadmissible. Defendants oppose the motion; they maintain that evidence to the foregoing matters may be probative on the factors to be considered in determining whether an award of enhanced damages is appropriate. Notwithstanding the defendants' protestations to the contrary, the Court finds the plaintiff's motion well-taken.<sup>1</sup> Accordingly,

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<sup>1</sup> Plaintiff has, on more than one occasion, alluded to the jury's role in determining whether an award of enhanced damages might be appropriate. Here, they contend that the evidence in question is probative of "the closeness of the case." As noted in another order, the jury's only role with regard to enhanced damages is to decide whether defendants' infringement was willful—a prerequisite to the consideration of enhanced damages. Should the jury find in favor of Monsanto on the issue of willfulness, it is for the Court alone to decide whether an award of enhanced damages and/or attorneys fees is appropriate.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the plaintiff's Motion in Limine No. 14 [729] is well-taken and should be, and hereby is, GRANTED.

SO ORDERED, this the 27<sup>th</sup> day of August, 2010.

/s/ W. Allen Pepper, Jr. \_\_\_\_\_  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE